

552(b), most often because it constitutes confidential business information as described in 5 U.S.C. 552(b)(4), and should be withheld from public disclosure.

(b) Information received as part of the procurement process is subject to the Federal Acquisition Regulation, 48 CFR Chapter 1, as well as this part. In any case of conflict between the Federal Acquisition Regulation and this part, the provisions of the Federal Acquisition Regulation prevail.

### § 512.3 Definitions.

Whenever used in this part:

(a) *Administrator* means the Administrator of the National Highway Traffic Safety Administration.

(b) *Chief Counsel* means the Chief Counsel of the National Highway Traffic Safety Administration.

(c) *Confidential business* information means trade secrets or commercial or financial information that is privileged or confidential, as described in 5 U.S.C. 552(b)(4).

(1) A *trade secret* is a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.

(2) Commercial or financial information is considered confidential if it has not been publicly disclosed and:

(i) If the information was required to be submitted and its release is likely to impair the Government's ability to obtain necessary information in the future, or is likely to cause substantial harm to the competitive position of the person from whom the information was obtained; or

(ii) if the information was voluntarily submitted and is the kind of information that is customarily not released to the public by the person from whom it was obtained.

(d) NHTSA means the National Highway Traffic Safety Administration.

(e) "*Substantial competitive harm*" includes "*significant competitive damage*" under Chapter 329 of Title 49 of the United States Code, Automobile Fuel Economy, 49 U.S.C. 32910(c).

## Subpart B—Submission Requirements

### § 512.4 When requesting confidentiality, what should I submit?

Any person submitting information to NHTSA, other than information in a class identified in appendix C of this Part, and requesting that the information be withheld from public disclosure pursuant to 5 U.S.C. 552(b) shall submit the following:

(a) The materials for which confidentiality is being requested, in conformance with §§ 512.5, 512.6, and 512.7 of this part;

(b) The Certificate, in the form set out in appendix A to this part;

(c) Supporting information, in conformance with § 512.8; and

(d) Any request for an extension of time, made in accordance with § 512.11.

### § 512.5 How many copies should I submit?

(a) Except as provided for in subsection (c), a person must send the following in hard copy or electronic format to the Chief Counsel when making a claim for confidential treatment covering submitted material:

(1) A complete copy of the submission, and

(2) A copy of the submission containing only the portions for which no claim of confidential treatment is made and from which those portions for which confidential treatment is claimed has been redacted, and

(3) Either a second complete copy of the submission or, alternatively, those portions of the submission containing the material for which confidential treatment is claimed and any additional information the submitter deems important to the Chief Counsel's consideration of the claim.

(4) If submitted in electronic format, a copy of any special software required to review materials for which confidential treatment is requested and user instructions must also be provided.

(b) A person filing comments to a rulemaking action must additionally submit to the rulemaking docket a copy of the submission containing only the portions for which no claim of confidential treatment is made and from

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which those portions for which confidential treatment is claimed has been redacted.

(c) Any person submitting blueprints or engineering drawings need only provide an original version with their submission.

### **§512.6 How should I prepare documents when submitting a claim for confidentiality?**

(a) Information claimed to be confidential must be clearly identified to enable the agency to distinguish between those portions of the submission claimed to constitute confidential business information and those portions for which no such claim is made.

(b) The word “CONFIDENTIAL” must appear on the top of each page containing information claimed to be confidential.

(1) If an entire page is claimed to be confidential, the submitter must indicate clearly that the entire page is claimed to be confidential.

(2) If the information for which confidentiality is being requested is contained within a page, the submitter shall enclose each item of information that is claimed to be confidential within brackets: “[ ].”

(c) Submissions in electronic format—(1) Persons submitting information under this Part may submit the information in an electronic format. Except for early warning reporting data submitted to the agency under 49 CFR part 579, the information submitted in an electronic format shall be submitted in a physical medium such as a CD-ROM. The exterior of the medium (e.g., the disk itself) shall be permanently labeled with the submitter’s name, the subject of the information and the words “CONFIDENTIAL BUSINESS INFORMATION”.

(2) Confidential portions of electronic files submitted in other than their original format must be marked “Confidential Business Information” or “Entire Page Confidential Business Information” at the top of each page. If only a portion of a page is claimed to be confidential, that portion shall be designated by brackets. Files submitted in their original format that cannot be marked as described above must, to the extent practicable, iden-

tify confidential information by alternative markings using existing attributes within the file or means that are accessible through use of the file’s associated program. When alternative markings are used, such as font changes or symbols, the submitter must use one method consistently for electronic files of the same type within the same submission. The method used for such markings must be described in the request for confidentiality. Files and materials that cannot be marked internally, such as video clips or executable files or files provided in a format specifically requested by the agency, shall be renamed prior to submission so the words “Confidential Bus Info” appears in the file name or, if that is not practicable, the characters “Conf Bus Info” or “Conf” appear. In all cases, a submitter shall provide an electronic copy of its request for confidential treatment on any medium containing confidential information, except where impracticable.

(3) Confidential portions of electronic files submitted in other than their original format must be marked with consecutive page numbers or sequential identifiers so that any page can be identified and located using the file name and page number. Confidential portions of electronic files submitted in their original format must, if practicable, be marked with consecutive page numbers or sequential identifiers so that any page can be identified and located using the file name and page number. Confidential portions of electronic files submitted in their original format that cannot be marked as described above must, to the extent practicable, identify the portions of the file that are claimed to be confidential through the use of existing indices or placeholders embedded within the file. If such indices or placeholders exist, the submitter’s request for confidential treatment shall clearly identify them and the means for locating them within the file. If files submitted in their original format cannot be marked with page or sequence number designations and do not contain existing indices or placeholders for locating confidential information, then the portions of the files that are claimed to be confidential shall be described by other means